

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:12-CV-153-DCK**

BETHANY SMITH,

Plaintiff,

v.

**THE SHERIFF’S OFFICE OF IREDELL
COUNTY, PHILLIP H. REDMOND,
BOBBY GEN GRUBB, JR., MELODY
REDMOND, AND TRAVELERS
CASUALTY and SURETY COMPANY
OF AMERICA,**

Defendants.

ORDER

THIS MATTER IS BEFORE THE COURT on Defendants’ “Motion To Dismiss And Answer” (Document No. 3) filed October 10, 2012. The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c), and this motion is ripe for disposition. Having carefully considered the motion, the record, and applicable authority, the undersigned will grant the motion.

The first section of Defendants’ “Motion To Dismiss And Answer” (Document No. 3) is the “First Defense And Motion To Dismiss The Sheriff’s Office Of Iredell County. (Document No. 3, pp.1-2). Defendants concisely argue that “there is no such entity and ‘The Sheriff’s Office of Iredell County’ lacks capacity to be sued.” Id.

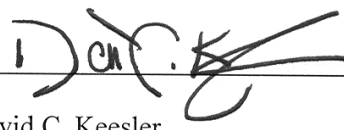
The undersigned observes that motions to dismiss contained in answers are generally considered by the Court to be preserved, and that a “party wishing to have decided any preserved motion shall file a separate motion and supporting brief.” Local Rule 7.1 (C)(1). It appears here that the “motion to dismiss” was contained in Defendants’ Answer; however, a “Brief In

Support Of The Motion To Dismiss Plaintiff's Complaint Against The Sheriff's Office Of Iredell County" (Document 4) was also filed on October 10, 2012, and the Court docketed Defendants' "Motion To Dismiss And Answer" (Document No. 3) as a pending motion to dismiss. Moreover, "Plaintiff's Response To Defendants' Motion To Dismiss..." (Document No. 6) was timely filed on October 19, 2012. No reply, or notice of intent not to reply, has been filed as required by Local Rule 7.1 (E).

Under the circumstances of this case, and particularly noting that "Plaintiff does not object to Defendants' Motion to Dismiss Plaintiff's Complaint Against The Sheriff's Office of Iredell County," the undersigned will recognize and allow the pending motion to dismiss. (Document No. 6).

IT IS, THEREFORE, ORDERED that Defendants' "Motion To Dismiss And Answer" (Document No. 3) is **GRANTED**. Defendant Sheriff's Office of Iredell County is **DISMISSED** from this lawsuit.

Signed: February 12, 2013



David C. Keesler
United States Magistrate Judge

